



United States Department of the Interior
FISH AND WILDLIFE SERVICE

Ecological Services
4000 Airport Parkway
Cheyenne, Wyoming 82001

Planning office



ES-61411
TAR/W.25/WY2612(WintrUse.YNP)

July 6, 1999

Memorandum

To: Superintendent, Yellowstone National Park, Wyoming

From: Field Supervisor, Ecological Services, Cheyenne, Wyoming

Subject: Winter Use Environmental Impact Statement

Thank you for your letter of May 24 requesting formal consultation with the U.S. Fish & Wildlife Service (Service) pursuant to Section 7(a)(2) of the Endangered Species Act (Act), 16 USC 1536(a)(2) and its implementing regulations concerning the potential impacts of winter use activities in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway (Parks) to threatened, endangered and proposed species.

As per the Act, formal consultation is required if an analysis of the impacts of a project determines the project "may affect, and is likely to adversely affect" threatened or endangered species (T&E) or designated critical habitat. This determination is made through the development of a biological assessment (assessment). Conversely, if the assessment determines the project is "not likely to adversely affect" T&E species or designated critical habitat, and the Service concurs with that determination, then consultation can be completed informally. For species proposed for listing, the Park Service is required to "confer" with the Service if the proposed action is likely to jeopardize the continued existence of the proposed species.

Therefore, based on the aforementioned guidelines, it will be necessary for the Parks to complete the assessment before it can be determined if formal consultation is required to meet Section 7(a)(2) of the Act. Consequently, to aid in this process, the following scoping information is provided to assist you in development of the assessment.

In accordance with section 7(c) of the Endangered Species Act of 1973, as amended (Act), my staff has determined that the following threatened or endangered species may be present in the project area.

<u>Species</u>	<u>Status</u>	<u>Expected Occurrence</u>
Bald eagle (<i>Haliaeetus leucocephalus</i>)	Threatened	Nesting. Winter resident. Migrant.

Peregrine falcon (<i>Falco peregrinus</i>)	Endangered	Nesting. Migrant.
Whooping crane (<i>Grus americana</i>)	Endangered	Resident. Migrant.
Grizzly bear (<i>Ursus arctos horribilis</i>)	Threatened	Resident.
Gray wolf (<i>Canis lupus</i>)	Experimental (Formerly Endangered)	Potential resident.

Canada lynx

The Canada lynx (*Lynx canadensis*) is now proposed for listing as threatened under the Act. The Parks are within the historical range of this species. Because this species has been proposed for listing, the Park Service needs to determine whether the proposed action is likely to jeopardize the continued existence of the lynx. If the assessment concludes that jeopardy is likely, a formal conference with the Service will be required.

Biological Assessment

Section 7(c) of Act requires that Federal agencies proposing major construction actions complete a biological assessment to determine the effects of the proposed actions on listed and proposed species. If a biological assessment is not required (i.e., all other actions), the lead agency is responsible for review of proposed activities to determine whether listed species will be affected. I would appreciate the opportunity to review your determination document.

The assessment should be completed within 180 days of receipt of the species list included herein, but can be extended by mutual agreement between the lead agency and the Service. If the assessment is not initiated within 90 days of receipt of a species list, the list of threatened and endangered species should be verified with me prior to initiation of the assessment. The biological assessment may be undertaken as part of the agency's compliance of section 102 of the National Environmental Policy Act (NEPA), and incorporated into the NEPA documents. The Service recommends that biological assessments include:

1. a description of the project;
2. a description of the specific area potentially affected by the action;
3. the current status, habitat use, and behavior of threatened and endangered species in the project area;
4. discussion of the methods used to determine the information in item 3;
5. direct and indirect impacts of the project to threatened and endangered species;
6. an analysis of the effects of the action on listed and proposed species and their habitats including cumulative impacts from Federal, State, or private projects in the area;
7. coordination measures that will reduce or eliminate adverse impacts to threatened and endangered species;
8. the expected status of threatened and endangered species in the future (short and long term) during and after project completion;

9. determination of "is likely to adversely affect" or "is not likely to adversely affect" for listed species;
10. determination of "is likely to jeopardize" or "is not likely to jeopardize" for proposed species;
11. citation of literature and personal contacts used in the assessment.

If it is determined that any agency program or project "is likely to adversely affect" any listed species, formal consultation should be initiated with this office. Alternatively, informal consultation can be continued so we can work together to determine how the project could be modified to reduce impacts to listed species to the "not likely to adversely affect" threshold. If it is concluded that the project "is not likely to adversely affect" listed species, the Service must be asked to review the assessment and concur with the determination of no adverse effect.

A Federal agency may designate a non-Federal representative to conduct informal consultation or prepare biological assessments. However, the ultimate responsibility for section 7 compliance remains with the Federal agency, and written notice should be provided to the Service upon such a designation. I recommend that Federal agencies provide their non-Federal representatives with proper guidance and oversight during preparation of biological assessments and evaluation of potential impacts to listed species.

Section 7(d) of the Act requires that the Federal agency and permit or license applicant shall not make any irreversible or irretrievable commitment of resources which would preclude the formulation of reasonable and prudent alternatives until consultation on listed species is completed.

Migratory Birds and Eagles

Also, please recognize that consultation on listed species does not remove your obligation to protect the many species of birds, raptors, and eagles protected under the Migratory Bird Treaty Act (MBTA) and Bald Eagle Protection Act. The MBTA, 16 U.S.C. 703, enacted in 1918, prohibits the taking of any migratory birds, their parts, nests, or eggs except as permitted by regulations and does not require intent to be proven. Section 703 of the Act states, "Unless and except as permitted by regulation...it shall be unlawful at any time, by any means or in any manner, to ...take, capture, kill, attempt to take, capture, or kill, or possess ...any migratory bird, any part, nest, or eggs of any such bird..." The Bald Eagle Protection Act, 16 U.S.C. 66dd, prohibits knowingly taking, or taking with wanton disregard for the consequences of an activity, any bald or golden eagles or their body parts, nests or eggs, which includes collection, molestation, disturbance, or killing.

To minimize impacts on nesting raptors and the possibility of "take" under the MBTA, the Service believes protective/mitigation measures are necessary and best accomplished by outlining specific measures to minimize impacts and the potential for "take." Any analysis of the project(s) and any raptor management section should address potential adverse impacts including habitat loss or degradation, nest abandonment, and specifically outline measures that will be implemented to minimize adverse effects to these species.

These preliminary scoping comments are made pursuant to the National Environmental Policy Act, the Endangered Species Act and Fish and Wildlife Coordination Act. Please keep this office informed of any developments or decisions concerning this project.

We appreciate your efforts to ensure the conservation of endangered, threatened, and candidate species and migratory birds. If you have any questions on this subject, please contact Terry A. Root of my staff at the letterhead address or phone 307-587-2216.

cc: Director, WGFD, Cheyenne, WY
Non-game Coordinator, WGFD, Lander, WY